

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

IMPLICIT, LLC,

*Plaintiff,*

v.

NETSCOUT SYSTEMS, INC.,

*Defendant.*

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Civil Action No. 2:18-cv-53-JRG  
LEAD CASE

JURY TRIAL DEMANDED

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**JOINT MOTION TO AMEND EIGHTH AMENDED  
DOCKET CONTROL ORDER (DKT. 133)**

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COME NOW JOINTLY Plaintiff Implicit, LLC (“Implicit”) and Defendants NetScout Systems, Inc. (“NetScout”) and Sandvine Corporation (“Sandvine”) respectfully move to amend the Court’s Eighth Amended Docket Control Order dated July 17, 2019 (Dkt. 133). In support thereof, the parties would respectfully show the Court as follows as providing good cause:

The parties seek a Ninth Amended Docket Control Order amending the deadlines for Fact Discovery, Disclosures for Expert Witnesses by the Party with the Burden of Proof, Reducing Prior Art References and Obviousness Combinations, Expert Discovery, and Dispositive Motions.

The requested amendment does not affect the trial date, nor any date after October 8, 2019. The parties request the modification to the schedule for fact discovery not for purposes of delay, but to complete four remaining depositions. Good cause exists for the parties’ requests for the remaining schedule modifications, in light of the date of the last deposition and the continuing production of certain documents by the Parties. Specifically, the following depositions will occur on the following dates outside of the presently scheduled date for the close of discovery:

- Samir Marwaha, 30(b)(1) witness and Chief Marketing Officer of Sandvine, on July 31.
- Richard Deggs, 30(b)(1) witness and Chief Financial Officer of Sandvine, on July 31.
- John Curtin, 30(b)(6) witness for NetScout, on August 6.
- Edward Balassanian, sole 30(b)(6) witness for Plaintiff, on August 6-7.

In addition, Plaintiff, Sandvine, and NetScout are each still in the process of producing a small quantity of documents pertaining to specific issues. Therefore, it is necessary to move the close of fact discovery and subsequent dates to account for these circumstances.

The proposed modifications are detailed in the following chart:

Current Deadline	Proposed Deadline	Event
September 24, 2019	September 28, 2019	*File Dispositive Motions
September 18, 2019	September 20, 2019	Deadline to Complete Expert Discovery
September 6, 2019	September 12, 2019	Serve Disclosures for Rebuttal Expert Witnesses
August 9, 2019	August 13, 2019	Serve Disclosures for Expert Witnesses by the Party with the Burden of Proof
August 9, 2019	August 13, 2019	Deadline to Reduce Prior Art References and Obviousness Combinations.
July 30, 2019	August 7, 2019	Deadline to Complete Fact Discovery and File Motions to Compel Discovery

WHEREFORE, PREMISES CONSIDERED, Implicit, NetScout, and Sandvine respectfully pray that the Court enter the attached Ninth Amended Docket Control Order, and for all other relief to which they are justly entitled.

<p>Dated: July 29, 2019</p> <p>By: <u>/s/ Mark C. Lang</u></p> <p>Abran J. Kean (CO Bar 44660)  <b>ERISE IP, P.A.</b>  5600 Greenwood Plaza Blvd., Suite 200  Greenwood Village, CO 80111  Telephone: (913) 777-5600</p> <p>Eric A. Buresh (KS Bar 19895)  Mark C. Lang (KS Bar 26185)  <b>ERISE IP, P.A.</b>  7015 College Blvd., Suite 700  Overland Park, Kansas 66211  Telephone: (913) 777-5600  Facsimile: (913) 777-5601  eric.buresh@eriseip.com  abran.kean@eriseip.com  mark.lang@eriseip.com</p> <p>Melissa Smith  Texas State Bar No. 24001351  melissa@gillamsmithlaw.com  <b>GILLAM &amp; SMITH, L.L.P.</b>  303 South Washington Avenue  Marshall, Texas 75670  Telephone: 903-934-8450  Facsimile: 903-934-9257</p> <p><i>Counsel for Defendants  NetScout Systems, Inc. and  Sandvine Corporation</i></p>	<p>Respectfully submitted,</p> <p>By: <u>/s/ Brandon C. Martin</u></p> <p>Spencer Hosie, <i>pro hac vice</i>,  (CA Bar No. 101777)  shosie@hosiellaw.com  Diane S. Rice, <i>pro hac vice</i>,  (CA Bar No. 118303)  drice@hosiellaw.com  Brandon C. Martin, <i>pro hac vice</i>,  (CA Bar No. 269624)  bmartin@hosiellaw.com  Darrell Rae Atkinson, <i>pro hac vice</i>,  (CA Bar No. 280564)  datkinson@hosiellaw.com  Francesca M. S. Germinario, <i>pro hac vice</i>,  (CA Bar No. 326208)  fgerminario@hosiellaw.com  <b>HOSIE RICE LLP</b>  600 Montgomery St., 34th Floor  San Francisco, CA 94111  415.247.6000  Fax: 415.247.6001</p> <p>William E. Davis, III (TX Bar No. 24047416)  bdavis@bdavisfirm.com  Christian J. Hurt (TX Bar No. 24059987)  churt@bdavisfirm.com  Edward Chin (Of Counsel)  (TX Bar No. 50511688)  echine@bdavisfirm.com  Debra Coleman (Of Counsel)  (TX Bar No. 24059595)  dcoleman@bdavisfirm.com  Ty William Wilson  (TX Bar No. 24106583)  twilson@davisfirm.com  <b>THE DAVIS FIRM, PC</b>  213 N. Fredonia Street, Suite 230  Longview, Texas 75601  Telephone: (903) 230-9090  Facsimile: (903) 230-9661</p> <p><i>Counsel for Plaintiff Implicit, LLC</i></p>
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**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document is being filed electronically in compliance with Local Rule CV-5(a). As such, this document is being served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(V). Pursuant to Federal Rule of Civil Procedure 5(d) and Local Rule CV-5(d) and (e), any counsel of record not deemed to have consented to electronic service will be served with a true and correct copy of the foregoing by email on this July 29, 2019.

/s/ Brandon C. Martin  
Brandon C. Martin